

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of)
)
HAWAIIAN ELECTRIC COMPANY, INC.)
)
For Approval and/or Modification of)
Demand-Side and Load Management)
Programs and Recovery of Program)
Costs and DSM Utility Incentives.)
_____)

DOCKET NO. 05-0069

ORDER NO. 21957

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DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

Filed August 3, 2005
At 9 o'clock A.M.

Karen Higashi.
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi.

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Demand-Side and Load Management)
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Docket No. 05-0069

Order No. 21957

ORDER

By this Order, the commission dismisses as untimely the requests of the COUNTY OF KAUAI ("CoK") and HONOLULU SEAWATER AIR CONDITIONING, LLC ("HSWAC") to intervene in this docket.

I.

Introduction

By Order No. 21698, filed on March 16, 2005, in Docket Nos. 04-0113 and 05-0069, the commission: (1) separated HAWAIIAN ELECTRIC COMPANY, INC.'s ("HECO") requests for approval and/or modification of demand-side and load management programs and recovery of program costs and demand-side management ("DSM") utility incentives (collectively referred to as the "Proposed DSM Programs") from Docket No. 04-0113 (the "Rate Case Docket"), and opened the instant docket (the "Energy Efficiency Docket") in which to consider these matters, among other things, and (2) determined the parties and participants for the Rate Case

Docket and the newly formed Energy Efficiency Docket to address and examine the Proposed DSM Programs.¹ The commission noted that the deadline by which all motions to intervene in the instant docket was twenty (20) days from the date of Order No. 21698, or April 5, 2005.

By Order No. 21749, filed on April 14, 2005, the commission granted the respective motions to intervene of the DEPARTMENT OF THE NAVY, ON BEHALF OF THE DEPARTMENT OF DEFENSE ("DoD"), HAWAII SOLAR ENERGY ASSOCIATION ("HSEA"), and HAWAII RENEWABLE ENERGY ALLIANCE ("HREA"), and required the filing of a stipulated prehearing order within thirty (30) days from the date of the Order.

By letter dated May 13, 2005, HECO, on behalf of HECO, the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), DoD, HSEA, and HREA, requested a one (1)-month extension of time, until June 16, 2005, to file a stipulated prehearing order.

By Order No. 21861, filed on June 7, 2005, the commission made HAWAIIAN ELECTRIC LIGHT COMPANY, INC. ("HELCO"), MAUI ELECTRIC COMPANY, LTD. ("MECO"), KAUAI ISLAND UTILITY COOPERATIVE ("KIUC"), and THE GAS COMPANY ("TGC") parties to the

¹By Order No. 21698, the commission granted the respective motions to intervene of LIFE OF THE LAND ("LoL") and the ROCKY MOUNTAIN INSTITUTE ("RMI") and the motion to participate of COUNTY OF MAUI ("CoM") in Docket No. 05-0069.

docket, limiting their participation to the issues dealing with statewide energy policies. The commission also approved HECO's request for an extension of time to file a stipulated prehearing order and provided the parties with an additional thirty (30) days from the date of Order No. 21861 to file a stipulated prehearing order for the commission's approval.

By letter dated July 7, 2005, the Consumer Advocate requested additional time, until August 12, 2005, to file a stipulated prehearing order. The commission approved the request for extension of time by letter dated July 17, 2005.

On June 17, 2005, CoK requested to participate or intervene in the instant docket.² HECO, HELCO, and MECO do not oppose CoK's Motion; provided CoK's participation: (1) is limited to those issues that relate to statewide energy policy, as referenced in Order No. 21861, and (2) does not broaden the issues or delay the proceeding.³

On June 24, 2005, HSWAC requested: (1) an enlargement of time to file a motion to intervene and (2) to intervene in this proceeding.⁴ On July 5, 2005, HECO filed a Memorandum in

²CoK's Motion to Participate or Intervene and Certificate of Service ("CoK's Motion"), filed on June 17, 2005.

³HECO, HELCO, and MECO's joint letter, dated June 27, 2005.

⁴Motion to Intervene and Motion for Enlargement of Time and Certificate of Service (collectively, "HSWAC's Motion"), filed on June 22, 2005.

Response to HSWAC's Motion.⁵ On July 14, 2005, HSWAC filed a response to HECO's response: (1) withdrawing its Motion for Enlargement of Time; and (2) urging the commission to grant its request to intervene.⁶

II.

Discussion

Hawaii Administrative Rules ("HAR") § 6-61-55, which governs intervention in our proceedings, requires, among other things, the movant to state the facts and reasons for the proposed intervention, and its position and interest thereto. Furthermore, HAR § 6-61-55(d) states that "[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented." Moreover, intervention as a party in a proceeding before the commission is not a right; rather, it is a matter resting within the commission's discretion. *In re Hawaiian Elec. Co., Inc.* 56 Hawaii 260, 535 P.2d 1102 (1975).

By Order No. 21698, the commission established a twenty (20)-day deadline (April 5, 2005) by which motions to participate

⁵Memorandum in Response to Motion to Intervene and Motion for Enlargement of Time of [HSWAC] and Certificate of Service, filed on July 5, 2005 ("HECO's Response").

⁶Memorandum in Response to Motion to Intervene and Motion for Enlargement of Time of HSWAC and Certificate of Service, filed on July 5, 2005 ("HSWAC's Response").

or intervene were to be filed, pursuant to HAR § 6-61-57(3)(B). Therefore, both CoK's and HSWAC's Motions, filed on June 17, 2005 and June 24, 2005, respectively, are untimely.

A motion for enlargement of time that is filed after the expiration of a deadline must demonstrate excusable neglect for the failure to act within the specified time period. HAR § 6-61-23(a)(2). CoK does not request an enlargement of time, while HSWAC withdrew its motion for enlargement of time.

A.

CoK

CoK, a political subdivision - a county - of the State of Hawaii, asserts that its interest in this docket is its status as a member/owner of KIUC and as the governing body for all Kauai residents, who comprise KIUC's members and owners.

Since CoK does not seek an enlargement of time by which to file its Motion, it does not expressly establish excusable neglect for failure to meet the deadline by which its Motion should have been filed. However, it does state that it "was made aware of the expansion of the docket [to include KIUC] only [the week prior to the filing of its Motion]" and it filed its Motion "within twenty days of the order making KIUC a party."⁷

⁷CoK's Motion at 3.

We recognize that this docket was created by a separation of matters from another docket, which is a relatively infrequent occurrence. Although the docket originated as a result of the separation of the Proposed DSM Programs from the Rate Case Docket, the commission provided a normal period by which persons were to file motions to intervene or participate, pursuant to HAR § 6-61-57(3)(B). The commission included KIUC, among others, in this docket after the expiration of the intervention deadline. As described in greater detail in Order No. 21861, the commission found that HELCO, MECO, KIUC, and TGC have interests relating to this docket and that their failure to participate in this docket may impair their ability to protect those interests. Accordingly, the commission *sua sponte* included these utilities to afford them an opportunity to protect those interests, but limited them to a review of only the issues relating to statewide energy policies.

The commission finds that CoK's statement that it learned of the inclusion of KIUC days before the filing of its Motion does not constitute "excusable neglect" for failure to timely file its Motion.⁸ As a result, the commission concludes that CoK's Motion should be dismissed for being untimely.

⁸Similarly, the commission previously determined the following acts do not constitute "excusable neglect":

- (1) Ignorance of the rules (*In re Laie Water Co.*, Order No. 17942, filed on August 2, 2000, in Docket No. 00-0017);

B.

HSWAC

HSWAC is developing a 25,000-ton seawater air conditioning district cooling system for downtown Honolulu. It also plans to develop a similar 25,000-ton seawater air conditioning district cooling system for Waikiki. HSWAC estimates completion of these projects prior to 2009.

HSWAC states that it is "eligible to intervene in these proceedings inasmuch as [it] has interest of such a nature that [its] participation will be in the public interest...."⁹ HSWAC claims its downtown Honolulu and Waikiki projects will reduce the demand for electrical power by a total of up to thirty-four (34) megawatts, which represents 2.0 to 2.4 years of HECO's projected load growth.¹⁰

HSWAC asserts that it "was not a party to Docket No. 04-0113 (the Rate Case Docket), only recently became aware of the newly formed Docket No. 05-0069 (the Energy Efficiency Docket), and was therefore unable to file a Motion to Intervene

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- (2) Among other things, an illness four (4) days prior to the deadline of a movant acting without counsel (*In re Soltur*, Order No. 18114, filed on October 4, 2000, in Docket No. 00-0063);
 - (3) Underestimation of the time for mailing of a motion transmitted via U.S. mail (*In re Puuwaawaa Waterworks*, Order No. 21021, filed on June 2, 2004, in Docket No. 03-0369).
 - (4) No claim or showing of excusable neglect (*In re Hawaii Elec. Light Co., Inc.*, Order No. 21678, filed on March 9, 2005, in Docket No. 04-0346).

⁹HSWAC's Motion at 7.

¹⁰*Id.*

within the time limit prescribed by statutes, rules, or by order of the [c]ommission."¹¹ HSWAC states that others such as HELCO, MECO, KIUC, and TGC were recently "allowed to intervene after the time limit prescribed by statutes, rules, or by order of the [c]ommission ... and requests similar consideration."¹² HSWAC further suggests that its reliance upon the commission's website, which "shows that there apparently ha[s] been no substantive activities reported since the posting of Order No. 21698, dated March 16, 2005" hindered its ability to timely file its Motion.¹³

HECO, in its response to HSWAC's Motion, argues that: (1) HSWAC has not demonstrated that HSWAC's failure to timely file a motion to intervene was a result of "excusable neglect" and (2) its Motion for Enlargement of Time should be denied. HECO states that HSWAC had two (2) opportunities to intervene in commission proceedings involving the approval of HECO's Proposed DSM Programs. "[T]he April 5, 2005 deadline was the second opportunity to file a motion to intervene in a proceeding involving the approval of HECO's [P]roposed DSM [P]rograms. The initial opportunity to file a motion to intervene was in Docket No. 04-0113 and the deadline to intervene, as stated in the public notice, was January 22, 2005, which was over nine [(9)]

¹¹Id. at 11.

¹²HSWAC's Motion at 11.

¹³Id. at 11 - 12.

weeks after HECO filed its [a]pplication and direct testimonies."¹⁴

HELCO, MECO, KIUC, and TGC did not seek to intervene in the instant docket. Instead, the commission joined these utilities as additional parties, *sua sponte*, based on the finding that there are statewide energy policies to be considered and these utilities have interests relating to this docket, which may be impaired by their failure to participate.¹⁵

The commission is not persuaded by HSWAC's argument and suggestion, respectively, that it only recently became aware of the instant docket, and that its reliance upon the commission's website hindered its ability to track the events occurring in this docket.¹⁶ The commission finds that HSWAC's recent discovery

¹⁴HECO's Response at 4.

¹⁵Unlike HELCO, MECO, KIUC, and TGC, HSWAC is not a public utility. See Act 164, 2005 Session Laws of Hawaii, *Relating to the Seawater Air Conditioning* (HRS § 269-1(2)(K), any person who owns, controls, operates, or manages any seawater air conditioning district cooling project, where at least fifty (50) per cent of the energy source is provided by a renewable energy source, such as cold, deep seawater, is not a public utility). The underlying consideration in joining HELCO, MECO, KIUC, and TGC is their status as providers of energy utility services. See Order No. 21861 at 5 - 6 (the remaining energy utilities operating in the State - HELCO, MECO, KIUC, and TGC - have interests relating to Docket No. 05-0069, and their failure to participate may impair their ability to protect those interests).

¹⁶The intervention deadline for this docket was noted in Order No. 21698, which, as recognized by HSWAC in its Motion, is posted on the commission's website. Further, the commission's website clearly states, among other things, the following:

The Hawaii Public Utilities Commission's web site, www.hawaii.gov/budget/puc, including the information found on the web site, is provided as a public service, and should not be construed as official government records. The information contained on the

of this docket does not constitute "excusable neglect" that justifies its failure to timely file its Motion to Intervene.¹⁷ Accordingly, the commission dismisses as untimely HSWAC's Motion to Intervene.

III.

Orders

THE COMMISSION ORDERS:


1. CoK's Motion to Participate or Intervene, filed on June 17, 2005, is dismissed as untimely.
2. HSWAC's Motion to Intervene, filed on June 24, 2005, is dismissed as untimely.


web site is dynamic and will change over time. Users of the web site are therefore fully responsible for determining the accuracy, completeness, and/or suitability of the information.

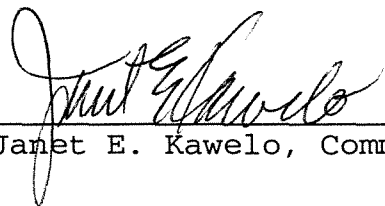
¹⁷See footnote 8, above.

DONE at Honolulu, Hawaii AUG - 3 2005.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

for 
Catherine P. Awakuni
Commission Counsel

05-0069.cs

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21957 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Certificate of Service

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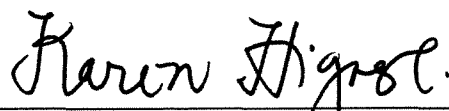
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DATED: AUG - 3 2005